IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kishori Lal. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 562/2005
against the order dated 11-2-2005 passed
by the Addl. Sessions Judge No.2, Bikaner,
in Criminal Revision No. 158/2003.

...

Date of Order: September 14, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Hemant Dutt, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr.Anil Vyas, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 11-2-2005 passed by the Additional Sessions Judge No.2, Bikaner (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 158/2003, whereby the revision petition filed by the petitioner against the order dated 19-8-2003 passed by the

Judicial Magistrate, Bikaner (for short, "the trial Court" hereinafter), was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

It is not in dispute that the non-petitioner No.2 Smt. Maina Devi is the legally wedded wife of the petitioner. The petitioner having failed to maintain and neglected the non-petitioner No.2, she filed an application under Section 125 of the Code seeking monthly allowance of maintenance. Earlier maintenance was granted @ Rs.500/- per month by the order passed in criminal miscellaneous case No. 14/1993 vide order dated 21-11-2005; however,on the revision petition filed by the present petitioner before the Sessions Judge, the Revisional Court reduced the maintenance from Rs.500/- to Rs.300/- per month and as such the non-petitioner No.2 is getting the monthly allowance of maintenance @ Rs.300/- per month. The non-petitioner No.2 filed an application under Section 127 of the Code seeking modification and enhancement of the maintenance on the ground that after 1993, there had been increase in the market rate because of market inflation as also increase in the salary of the petitioner, who is a railway employee working in the Railway Workshop drawing the salary of Rs.8000/- per month. The parties led the evidence. The trial Court, on

appreciation of the evidence, keeping in view the increase in the market rate and in the salary of the petitioner, enhanced the monthly allowance of maintenance from Rs.300/- to Rs.1000/- per month. That order was challenged by the petitioner before the Revisional Court and the Revisional Court, on re-consideration of the material on record, vide impugned order, came to the conclusion that the income of the petitioner is not less than Rs.8000/- per month and, therefore, granting maintenance @ Rs.1000/- per month in favour of the non-petitioner No.2 cannot be said to be erroneous and consequently dismissed the revision petition filed by the petitioner.

Learned counsel for the petitioner submits that the petitioner is a patient of anemia and, therefore, he is required to undergo medical treatment and as such he is unable to pay the monthly maintenance @ Rs.1000/- to the non-petitioner No.2. It is not in dispute that the petitioner is a railway employee and any amount incurred on medical treatment is reimbursement or he may be provided free medical treatment in the Railway Hospital. In the circumstances, therefore, the Courts below granted reasonable amount of monthly maintenance in favour of the non-petitioner No.2. A sum of Rs.1000/- per month is hardly an excessive amount of maintenance keeping in view the rising trend of market price and inflation. It cannot be said that the order impugned would result in serious miscarriage of justice or

abuse of process of the Court.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs